the operation they went off without informing any one, leaving the cut end of the pipe open and exposed.

Mr. McLennan himself frankly admitted that to cut the pipe in the manner in which it was cut was dangerous and he would not have done it in that way and it could have been done with safety.

I am satisfied that the burning operations to a section of the steam line in way of No. 4 aft port winch and to the smoothering line were both carried out in the afternoon. I accept the evidence of the Chief Officer and Mr. Flavell on this matter, supported as it is by the log book and the probabilities of the matter. The log book entry, which speaks for itself, was made at 8 o'clock in the evening on the 24th July, not quite 4 hours after the fire was first discovered and when it could not have been in the contemplation of any one that anything was going to turn on the time the fire chit was brought.

The defendants' evidence on the matter was that the first burning operation was done at 8.30 a.m. on the 24th and it was completed by 9 a.m., while the second burning operation did not take place until after 1 p.m. and took but 10 minutes. I consider it highly unlikely and an altogether improbable circumstance that the burner would have stood by after the first operation and waited for over four hours merely to do a ten minute job.

I am also satisfied on the evidence that in burning off the smoothering pipe the defendants were acting in direct contravention of the specific instructions given to them by the Chief Officer and Mr. Flavell. The defendants' workmen were told to carry on with the first job and to do nothing else without reporting to Mr. Flavell and not to move to any other spot without informing him. Mr. Flavell then accompanied the workman to the site of the first job before it was commenced and this is corroborated by the burner Low Peng Hee. Mr. Flavell had a fire extinguisher placed in position and saw that a fire hose was rigged. He then went back to the work he had been doing of assisting with the cargo plans for No. 2 Hold. The defendants' workmen failed to report to Mr. Flavell after completing the first job but went ahead with the burning operation on the smoothering line. In the circumstances their conduct amounted to negligence sufficient, in my opinion, to entitle the plaintiffs to recover.

I am satisfied that no permission was given for the burning operation on the smoothering line to be carried out. I think the position was, as appears from the evidence of Mr. Anderson, that having completed the first job the fitter just told the burner to come along and burn off the pipe.

I have no doubt the 2nd Engineer would indicate to the fitter — who had various jobs to do — the repairs required at an initial survey of the work to be done. But so far as burning operations were concerned it was the Chief Officer whose permission was required and this was recognised by the defendants, who presented the fire chit to him for signature.

It is true that Mr. Flavell's evidence differs from the Chief Officer's as to whether he knew of the second burning operation or not and one or other of them is obviously but, I think, honestly mistaken. The Chief Officer may well have assumed that Mr. Flavell would have known but in any event it was never suggested that the instructions the Chief Officer gave contained any specific reference to the smoothering line. It was simply an order to do the first job and not to move away from it elsewhere or to another job without first reporting.

The fire was in no way attributable to negligence on the part of the first plaintiffs or their servants or agents.

In the result I find that the damage done to the vessel and cargo was due to the negligence of the defendants. The amount of damages to which the plaintiffs are entitled to be later determined by agreement or, in default thereof, by assessment by the Registrar.

The defendants must pay to the plaintiffs their costs of the action.

Judgment for the plaintiffs.

Solicitors: *Rodyk & Davidson; Donaldson & Burkinshaw.*

TAN GIOK HUE v. LIM SWEE PENG

[O. C. J. (Ong J.) March 30, 1960]

[Kuala Lumpur — Suit No. 275 of 1959]

Negligence — Onus of Proof — Res ipsa loquitur — Skid — Whether presumption of negligence is rebutted by showing blow-out of tyre.

A car hired by the defendant, was proceeding south from Kuala Lumpur towards Kajang when, after crossing a bridge the car suddenly swerved across the road, directly into the path of a truck which was coming from the opposite direction and which struck the car broadside on its left killing the plaintiff's husband. Evidence was adduced by the defendant that the accident was due to a skid as the result of a tyre blow-out. No other reason was given for the skid. The plaintiff as administratrix of the deceased claimed damages from the defendants on the ground that her husband's death was caused by the negligence of the defendant.

Held: (1) the fact that the car after crossing the bridge swerved suddenly across the road onto the opposite direction raised a presumption of negligence against the defendant requiring him to prove affirmatively that he had exercised reasonable care; to displace the presumption it was not sufficient for the defendant to show that the immediate cause of the accident was a skid due to a tyre blow-out, the blow-out could either be the cause of the skid or it could be the result of the collision. All the evidence and circumstances of this case indicated a blow-out after collision;

(2) the defendant had therefore not discharged the onus which rested on him of giving an explanation of the cause of accident which did not connote negligence on his part. Principle formulated by Asquith L.J. in *Barkway* v. *South Wales Transport Co. Ltd.*[3] applied.

[**Editorial Note:** The doctrine of *res ipsa loquitur* was also discussed and applied in *Menon* v. *Pigeonneau* [1957] M.L.J. 85, C.A.]

Cases referred to:—

(1) *Scott* v. *London Dock Co.* (1865) 3 H. & C. 596.
(2) *Laurie* v. *Raglan Building Co. Ltd.* [1942] 1 K.B. 152, 154.
(3) *Barkway* v. *South Wales Transport Co. Ltd.* [1948] 2 All E.R. 460, 471.
(4) *Moore* v. *R. Fox & Sons* [1956] 1 Q.B. 596.
(5) *Esso Petroleum Company Ltd.* v. *Southport Corporation* [1956] 2 W.L.R. 81, 92.
(6) *Ballard* v. *North British Railway Co.* [1923] S.C. (H.L.) 43.
(7) *The Kite* [1933] P. 154, 168.

ACTION FOR DAMAGES.

Richard Talalla for the plaintiff.

M. Edgar for the defendant.

Cur. Adv. Vult.

Ong J.: This is an action for damages arising out of a collision between a truck chassis and a Morris Minor motor-car driven by the defendant which resulted in the death of the plaintiff's husband, a passenger in the motor-car. The plaintiff, suing as administratrix of the deceased and on her own behalf and that of the five children of the marriage, under sections 7 and 8 of the Civil Law Ordinance, 1956, alleges that her husband's death was attributable to negligence on the part of the defendant.

No controversy arises as to any of the material facts disclosed in relation to the manner in which the collision took place. These facts are quite clear. The collision occurred at or about 4.30 p.m. on February 1, 1958 on the Cheras Road, after it had been raining for some time and while the rain was still continuing. The defendant had hired the Morris Minor motor-car for the day, and was proceeding south from Kuala Lumpur towards Kajang with the deceased seated beside him on his left. He had just negotiated a left-hand bend situated at a slight gradient. At the bottom of the slope, which is also the end of the bend, there is a bridge across a small stream, the Sungei Raya. After crossing this bridge the Morris Minor suddenly swerved across the road, directly into the path of the truck which was coming from the opposite direction and which struck the motor-car broadside on its left. The deceased died of his injuries at about 4 p.m. on the following day.

Upon these facts I hold that a *prima facie* case of negligence has been made out against the defendant, and that the principle of *res ipsa loquitur* applies. If a motor-car is driven with reasonable care and skill in executing a simple manoeuvre of going round a bend it is ordinarily not found on the wrong side of the road where it ought not to be and in the path of an oncoming vehicle. The onus, therefore, rests upon the defendant to show that his motor-car found itself where it did without any negligence on his own part. As Erle C.J. said in *Scott* v. *London Dock Co.*:(1)

"But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."

The defendant has by his defence traversed the allegations of negligence and pleaded that the collision "was caused wholly by an inevitable accident which could not have been avoided by the exercise of reasonable care". Giving further and better particulars, the defendant attributed the accident to a skid. In support of his case, Counsel for the defendant elicited from Police Inspector Shingara Singh, who arrived on the scene a few minutes after the accident, evidence that the rear offside tyre of the Morris Minor had suffered a blow-out. This fact was corroborated by the Vehicles Examiner of the Road Transport Department, who examined the vehicle at the scene of the accident two days later. The defendant's case, therefore, is that the accident was due to a skid, and that the skid was the direct result of the tyre blow-out which he has proved. No other reason or explanation has been given for the skid.

Proof of the blow-out, however, is not of itself sufficient to exonerate the defendant from liability. In my view, the crucial question that I have to determine is whether the blow-out was the cause of the skid, or whether it was the result brought about by the violent impact of two moving vehicles in collision. If the former, then, in my opinion, the accident was inevitable and no blame attaches to the defendant, because the motor-car was hired for the day from its owners, the tyres were to all outward appearances in good condition, and the skid took place when the two approaching vehicles were only 30 feet apart on a road 20 feet wide, and it would have been impossible for the defendant to have done anything to avoid the consequences of a skid within a fraction of a second. His liability is not that of the owners of the vehicle who might have been negligent in respect of the tyre.

If, on the other hand, the skid was not preceded and brought about by the blow-out, then the true legal position is that which has been stated by Lord Greene M.R. in *Laurie* v. *Raglan Building Co. Ltd.*(2)

"The skid by itself is neutral. It may or may not be due to negligence. If where a *prima facie* case of negligence arises, it is shown that the accident is due to a skid which happened without default of the driver, the *prima facie* case is clearly displaced, but merely to establish the skid does not appear to me to be sufficient for that purpose."

I have felt some anxiety in arriving at my own conclusion, between the possible alternatives, as to what really did happen. This is due to the paucity of evidence in material particulars, and the quality of such evidence as was given, relating to the damaged tyre. Had the Vehicles Examiner caused the damaged tyre and inner tube to be removed for closer examination, as he ought to have done, I have no doubt that much light would have been thrown both on the cause of the blow-out and on the question whether or not the flat tyre had travelled on the wheel-rim before the collision. Moreover, it did not appear to have occurred to any of the interested parties

to preserve the wheel or tyre or tube as evidence. I have thus to reach my finding as best I can on the meagre evidence available.

Upon careful consideration of all the evidence and of the surrounding circumstances, I have come to the conclusion that the skid was not caused by the blow-out, but that the blow-out was the result of the collision. I have reached this conclusion on two main grounds. First, although the defendant himself in his defence and particulars attributed his accident to a skid, neither in examination-in-chief, nor in cross-examination, nor in answer to the Court did he say at any time that his car skidded by reason of a blow-out. Secondly, according to the Vehicles Examiner, the wheel-rim was bent over in one place only, this wheel appeared also to be bent at the hub, and one leaf of the main-spring over this wheel was broken. This is consistent, in my view, with a blow-out after collision, but not with one preceding the skid. I do not think — even without the benefit of expert opinion — that when a car in forward motion suffers a blow-out in one tyre, the steel rim of such wheel would be bent over in one place and that this wheel would also be bent at its hub, and a leaf of the main-spring broken.

Leaving aside the question of a blow-out, I am further of opinion that a skid occurring as it did is nothing surprising. The defendant is by no means an experienced driver, although he held a Driving Licence since passing his driving test in December 1956. During the fourteen months which elapsed between then and the date of the accident the defendant only drove occasionally — according to himself, one to three times a month — using cars borrowed from friends or hired. The weather conditions, wet road-surface, the bend and gradient are all contributory factors conducive to bringing about a skid if no more care was exercised than in driving on dry roads. All these factors favouring a skid were present at the relevant time and place, and any motorist of reasonable prudence would or should have been well aware of the necessity for exercising more than the ordinary degree of care. In the whole of the defendant's evidence what struck me as conspicuously absent was any reference by him to his appreciation of the necessity for greater caution under those weather and road conditions, and that he did in fact exercise the degree of care that was then called for.

It is idle to speculate, in the absence of evidence, on the many and varied possibilities which might have accounted for the skid. The defendant was singularly unhelpful. He merely said what was only too evident, that he skidded after the bend and thereby lost control of the vehicle. Beyond denying that his speed — which he estimated at 20 to 25 miles per hour — was responsible for the skid, he was unable to ascribe it to any cause, and made no attempt even to do so. I regret that I am unable to accept his estimate of his speed at its face value.

Under these circumstances, I think the principle to be applied is that stated by Asquith L.J. in *Barkway* v. *South Wales Transport Co. Ltd.*[3] where the offside front tyre of the defendants' motor omnibus burst, causing the vehicle to swerve to the offside of the road, mount the pavement and fall down an embankment, killing and injuring several of its passengers:

> "The position as to *onus* of proof in this case seems to me to be fairly summarised in the following short propositions. (i) If the defendants' omnibus leaves the road and falls down an embankment, and this without more is proved, then *res ipsa loquitur*, there is a presumption that the event is caused by negligence on the part of the defendants, and the plaintiff succeeds unless the defendants can rebut this presumption. (ii) It is no rebuttal for the defendants to show, again without more, that the immediate cause of the omnibus leaving the road is a tyre-burst, since a tyre-burst *per se* is a neutral event consistent, and equally consistent, with negligence or due diligence on the part of the defendants. When a balance has been tilted one way, you cannot redress it by adding an equal weight to each scale. The depressed scale will remain down. This is the effect of the decision in *Laurie* v. *Raglan Building Co. Ltd.*, where not tyre-burst but a skid was involved. (iii) To displace the presumption, the defendants must go further and prove (or it must emerge from the evidence as a whole) either (a) that the burst itself was due to specific cause which does not connote negligence on their part but points to its absence as more probable, or (b), if they can point to no such specific cause, that they used all reasonable care in and about the management of their tyres: *Woods* v. *Duncan, The Thetis*. The second limb, (b), of the last proposition is the relevant one for the purposes of this case."

The principle thus formulated was approved by the Court of Appeal in *Moore* v. *R. Fox & Sons*,[4] where the husband of the plaintiff was killed by an explosion of a derusting tank but the cause of the accident was inexplicable. It was held — (I quote from the headnote):

> "that the doctrine of *res ipsa loquitur* applied and that the employers had not discharged the onus of proof placed on them merely by showing that the accident was inexplicable; that it was not sufficient to show several hypothetical causes consistent with the absence of negligence and that the accident might have occurred without negligence on their part; but that to discharge the onus they had to go further and either show that they had not been negligent, or give an explanation of the cause of the accident which did not connote negligence by them."

After discussing the Judgment of Asquith L.J. in *Barkway's* case, the speech of Lord Radcliffe in *Esso Petroleum Company Ltd.* v. *Southport Corporation*,[5] that of Lord Dunedin in *Ballard* v. *North British Railway Co.*,[6] and the judgment of Langton J. in *The Kite*,[7] Lord Greene M.R. said (at page 613):

> "If, by the passage I have last quoted, Langton J. meant to lay it down that in a case of *res ipsa loquitur*, that is to say, a case in which the onus has been cast upon the defendants, it is sufficient to discharge that onus for them to show that the accident might have occurred for more than one reason some of which reasons are consistent with the absence of negligence, then it seems to me that the conclusion is not justified and is in conflict with the formulation of Asquith L.J. and the language of Lord Radcliffe."

Applying the above principle, I hold that the defendant has not discharged the onus which rests upon him of giving an explanation of the cause of the accident which did not connote negligence on his part.

I therefore give judgment for the plaintiff.

I come now to the question of damages. The deceased was born on December 26, 1921, and therefore was just over 36 years old when he died. His widow, the plaintiff, who is now 33 years old by Chinese reckoning, was 30 when she was widowed. The five children of the marriage were 11, 10, 7, 3 years old (reckoned to nearest birthday) and 9 months old when their father and breadwinner died. I think the deceased should have had a natural expectation of life of at least 24 years. His total net income at the time of his death was $418.50, after deduction of Provident Fund contribution. He was a schoolmaster, and his retirement age would be 55. Taking all circumstances into consideration, the uncertainties and vicissitudes of life, I think that 19 years would be a reasonable period during which his dependants could expect to be maintained by him. He used to give his wife $280 to $300 monthly for her own and household expenses, and, in proportion to his earnings, I am satisfied that the plaintiff made no exaggeration. She impressed me as completely honest, and I accept her testimony. Considering that the deceased and his family had rent-free accommodation, which is no longer available, and after deducting what was enjoyed by him out of the monthly household expenses, the loss suffered by his dependants monthly may reasonably be assessed at $220, which is $2,640 per annum. Making all due allowances for the possibility of the widow remarrying, as she is still comparatively young, and for accelerated payment in a lump sum I would assess the damages under section 7 of the Civil Law Ordinance, 1956 at $35,000.

I would apportion this amount as follows:

To the widow - - -	$15,000
To the eldest child - -	2,500
To the second child - -	3,000
To the third child - -	4,000
To the fourth child - -	5,000
To the fifth child - -	5,500
Total:	$35,000

The deceased must have been unconscious till he died, and in the absence of any medical evidence, I make no award of damages for pain and suffering. The amount of damages for loss of expectation of life, which I would assess at $3,000, is of no more than academic interest, as it is merged in the damages recoverable by the family of the deceased. I think the claim for funeral expenses not unreasonable, and as the amount spent was not seriously disputed, I award the sum of $1,000 under this head.

In case this matter should go further resulting in payment being delayed, the damages will carry interest at 6% from date of judgment till satisfaction.

The plaintiff will have the costs of this action.

Judgment for the plaintiff.

Solicitors: *Lovelace & Hastings; Bannon & Bailey.*

KUAN HING WAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) April 8, 1960]

[K. L. — Selangor Criminal Appeal No. 14 of 1960]

Criminal Law and Procedure — Possession of suspected stolen property — Suspicion — Minor Offences Ordinance, 1955, s.29(1) — Conviction under.

Before a conviction can be made under section 29(1) of the Minor Offences Ordinance, it must be proved in the first place that the property in possession of which the accused person is found is something "which may be reasonably suspected of being stolen". That suspicion may attach to the property in a number of ways. It may arise from the nature of the property, as where a beggar is found in possession of a diamond ring. It may arise from the behaviour of the accused person, as where he runs away when approached by a police officer. There must, however, be something in the circumstances which gives reasonable ground for suspicion.

In this case the appellant was a man of very bad character with a number of previous convictions. About midnight on January 21 a Police Inspector found a bicycle without its dynamo in Jalan Tallala. For a reason he did not state in evidence the Inspector went straight to the appellant's house and he was found asleep. The Inspector asked him where the dynamo of the bicycle was, but the appellant denied all knowledge of this dynamo and the Inspector and another police officer then searched the house: they found a motor-cycle dynamo at the side of the appellant's bed. The appellant and his brother gave evidence from which it was fairly clear that the appellant's brother had something to do with the theft of the dynamo which was missing from the bicycle found by the police in the street. As regards the motor-cycle dynamo which was in fact found in the possession of the appellant both witnesses agreed that this was given to the appellant by his brother who said he had had it from a friend to be sold.

Held: there was nothing inherently suspicious in being in possession of an old dynamo and in fact that dynamo was not the stolen one for which the police were looking.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This appellant was convicted in the Magistrates' Court at Kuala Lumpur for possession of property reasonably suspected of having been stolen, in contravention of section 29(1) of the Minor Offences Ordinance, 1955. He was sentenced to one year's imprisonment to be followed by one year's police supervision.

Against that conviction and sentence he has now appealed.

The material portions of section 29(1) of the Minor Offences Ordinance, 1955, read as follows:—

"Any person who has in his possession ..... anything which may be reasonably suspected of being stolen ..... shall, if he fails to account satisfactorily how he came by the same, be liable to ..... imprisonment for a term not exceeding three months .....".

Where, as here, the person convicted under the section has previous convictions for certain offences the maximum period of imprisonment which may be imposed is increased by section